

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|                           |   |                        |
|---------------------------|---|------------------------|
| KELDREN CHEDAL JOSHUA,    | ) | CV 09-8067, CR 05-1140 |
|                           | ) | RSWL                   |
| Plaintiff,                | ) |                        |
|                           | ) |                        |
| v.                        | ) | <b>ORDER</b>           |
|                           | ) |                        |
|                           | ) |                        |
| UNITED STATES OF AMERICA, | ) |                        |
|                           | ) |                        |
| Defendant.                | ) |                        |
|                           | ) |                        |
|                           | ) |                        |

Before the Court is Plaintiff's Motion to Vacate, Set Aside, or Correct Sentence By a Person in Custody 28 U.S.C. 2255 [1, 268]. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**

Plaintiff's Motion is **DENIED**. Plaintiff voluntarily signed a plea agreement with the Government when Plaintiff pled guilty in the underlying criminal action. In that plea agreement, Plaintiff agreed to give up his right to bring a post-conviction collateral

1 attack on his sentence, except based on a claim of  
2 ineffective assistance of counsel, new evidence, or an  
3 explicitly retroactive change in the applicable  
4 Sentencing Guidelines.

5 In the instant Motion, Plaintiff attempts to  
6 challenge his sentence by bringing a claim of  
7 ineffective assistance of counsel. A claim for  
8 ineffective assistance of counsel has two requirements.  
9 Strickland v. Washington, 466 U.S. 668, 687-90, 694  
10 (1984). First, a defendant must demonstrate a grossly  
11 deficient performance by counsel. Id. To meet this  
12 requirement, defendant must show that counsel's  
13 performance fell below an objective standard of  
14 reasonableness. Id. Second, defendant must show  
15 prejudice resulting from the deficient performance.  
16 Id. To establish prejudice, defendant must show that  
17 "but for counsel's unprofessional errors, the result of  
18 the proceeding would have been different." United  
19 States v. Howard, 381 F.3d 873, 877 (2004).

20 Plaintiff has shown neither requirement to  
21 establish ineffective assistance of counsel. Plaintiff  
22 fails to show how his Counsel's performance was  
23 "grossly deficient." Plaintiff argues that his Counsel  
24 should have made arguments more forcefully to the Court  
25 in order to convince the Court to reduce Plaintiff's  
26 criminal history category. However, the Record in the  
27 case shows that Plaintiff's Counsel was successful in  
28 convincing the Court to reduce Plaintiff's criminal

1 history category, just perhaps not as much of a  
2 reduction as Plaintiff believed was fair. Such  
3 evidence does not support a finding that Plaintiff's  
4 Counsel's performance fell below an objective standard  
5 of reasonableness.

6 Moreover, Plaintiff has not adduced any facts to  
7 show that prejudice resulted from his Counsel's  
8 deficient performance. Plaintiff has not shown that,  
9 but for his Counsel's errors, his sentence would have  
10 been different. To the contrary, all the facts of the  
11 case show that the Court appropriately decided  
12 Plaintiff's sentences by considering the factors set  
13 forth in 18 U.S.C. § 3553(a). Utilizing these factors,  
14 the Court sentenced Plaintiff at the low end of the  
15 advisory sentencing guideline range.

16 Furthermore, in arriving at the sentence, the Court  
17 addressed the arguments Plaintiff raises in his instant  
18 Motion. The Court specifically considered, and  
19 rejected, Plaintiff's argument that he was entitled to  
20 a minor role adjustment and his sentencing entrapment  
21 theory. As noted above, the Court accepted Plaintiff's  
22 argument that he should be entitled to a downward  
23 departure in his criminal history category. Thus,  
24 Plaintiff cannot now say that, but for his Counsel's  
25 deficient performance, he would have received a more  
26 lenient sentence when the same arguments Plaintiff  
27 presents in the instant Motion for a more lenient  
28 sentence were considered by the Court in the initial

sentencing.

Accordingly, as Plaintiff has failed to meet both requirements to prove ineffective assistance of counsel under Strickland and does not allege new evidence or a retroactive change in the guidelines, Plaintiff cannot attack his sentence.

IT IS SO ORDERED.

Dated: May 13, 2010

RONALD S.W. LEW

HONORABLE RONALD S.W. LEW

Senior, U.S. District Court Judge